IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3006 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJAYSINH SAGATSINH BHATI (RAJPUT)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3006 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 10-02-2004. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case registered against the petitioner. The said case is registered as Gunah Register No.199/2004 under the provisions of Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. The detaining authority has also relied on the statements of some witnesses, whose names have not been disclosed by claiming privilege under Section 9 (2) of the Act. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Ms.Qureshi, learned advocate for the petitioner has also submitted that power exercised by the detaining authority under Section 9 (2) of PASA by not disclosing the names of the witnesses is not proper, as before claiming privilege detaining authority has not satisfied itself about the character and antecedents of the detenu.

3) Ms.Qureshi, learned advocate for the petitioner submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To substantiate her say, Ms.Qureshi has relied upon the judgement of this Court in Sandip Omprakash Gupta Vs. State of Gujarat and others, reported in 2004 (1) GLR 864, wherein this Court has observed that a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, on the aforesaid submission about solitary case lodged against the petitioner, which can be taken care under the criminal law, this petition is required to be allowed.

4) Learned advocate for the petitioner has also submitted that at the time of passing the order of detention, the petitioner was already in police custody and without satisfying itself subjectively, the detaining authority has stated that on presenting bail application, the petitioner will be released on bail, therefore, subjective satisfaction of the detaining authority stands vitiated.

5) Considering the fact that there is only solitary case registered against the petitioner, the point involved in this matter is covered by the aforesaid judgement of this Court. On this ground, this petition is required to be allowed and it is allowed.

6) In view of what is stated above, this petition is allowed. The order of detention dated 10-02-2004 is quashed and set aside. The detenu, Ajaysinh Sagatsinh Bhati (Rajput) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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